

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CLARENCE ZACHERLE (a.k.a.
CLARENCE RANDALL
ZACHERLE, a.k.a. RANDY
ZACHERLE),

Plaintiff,

vs.

SPOKANE COUNTY JAIL,
SPOKANE COUNTY SHERIFF
and DR. CHRIS KENNEDY,

Defendants.

NO. 13-CV-5122-JPH

REPORT AND RECOMMENDATION TO
DISMISS COMPLAINT

By Order filed December 18, 2013, the Court advised Plaintiff of the deficiencies of his initial complaint and directed him to amend or voluntarily dismiss within sixty (60) days, ECF No. 9. Plaintiff had initiated this civil rights action pursuant to 42 U.S.C. § 1983 while incarcerated at the Spokane County Jail, and was subsequently transferred to the Colville Tribal Correctional Facility in Nespelem, Washington. He is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

In his Complaint, Plaintiff sought unspecified monetary damages and an investigation of the Spokane County Jail's medical department, for alleged deliberate indifference to his shoulder and hip injuries in 2007. Plaintiff's claims, however, are precluded by the three year statute of limitations governing lawsuits under 42 U.S.C. §

1 1983 in the State of Washington under RCW 4.16.080(2). *See Wilson v. Garcia*, 471 U.S.
2 261 (1985); *Rose v. Rinaldi*, 654 F.2d 546, 547 (9th Cir. 1981); *Joshua v. Newell*, 871
3 F.2d 884, 886 (1989). Plaintiff has presents no grounds to toll the running of the
4 limitations period. Therefore, **IT IS RECOMMENDED** the complaint be **DISMISSED**
5 **with prejudice** for failure to state a claim upon which relief may be granted. *See Levald,*
6 *Inc. v. City of Palm Desert*, 998 F.2d 680, 686-87 (9th Cir. 1993). **IT IS FURTHER**
7 **RECOMMENDED** that this count as one of the dismissals under 28 U.S.C. § 1915(g).

8 **OBJECTIONS**

9 Any party may object to a magistrate judge's proposed findings, recommendations
10 or report within fourteen (14) days following service with a copy thereof. Such party
11 shall file written objections with the Clerk of the Court and serve objections on all
12 parties, specifically identifying the portions to which objection is being made, and the
13 basis therefor. Any response to the objection shall be filed within fourteen (14) days after
14 receipt of the objection. Attention is directed to FED. R. CIV. P. 6(e), which adds
15 additional time after certain kinds of service.

16 A district judge will make a de novo determination of those portions to which
17 objection is made and may accept, reject, or modify the magistrate judge's determination.
18 The judge need not conduct a new hearing or hear arguments and may consider the
19 magistrate judge's record and make an independent determination thereon. The judge
20 may, but is not required to, accept or consider additional evidence, or may recommit the
21 matter to the magistrate judge with instructions. *United States v. Howell*, 231 F.3d 615,
22 621 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), FED. R. CIV. P. 72; LMR 4, Local
23 Rules for the Eastern District of Washington.

24 A magistrate judge's recommendation cannot be appealed to a court of appeals;
25 only the district judge's order or judgment can be appealed.

26 **IT IS SO RECOMMENDED.** The District Court Executive is directed to enter
27
28 **REPORT AND RECOMMENDATION TO DISMISS COMPLAINT -- 2**

1 this Report and Recommendation, forward a copy to Plaintiff at his last known address
2 and SET A CASE MANAGEMENT DEADLINE ACCORDINGLY.

3 **DATED** this 24th day of February, 2014.

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5 *S/ James P. Hutton*
6 JAMES P. HUTTON
7 UNITED STATES MAGISTRATE JUDGE
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